

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

MARTIN E. O'NEILL,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 31218-12.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

On November 22, 2013, respondent filed a motion to take the deposition of petitioner pursuant to Tax Court Rule 74(c)(3). The motion states that petitioner objects. We will deny the motion without prejudice.

Taking the motion at face value, it appears that respondent reasonably seeks to take the deposition in order to obtain relevant information, and that the taking of the deposition would contribute to the efficiency of the development of the case and of subsequent settlement or trial. It seems clear that, under the Rules of Civil Procedure (if they were applicable), the proposed deposition would be unexceptionable.

However, with respect to depositions, the Tax Court operates differently from the district courts, and for good reason. The Tax Court exists in order to create a means for resolving tax disputes as inexpensively as possible. In every Tax Court case, the taxpayer's opponent is his Government. A majority of Tax Court petitioners are self-represented; and many Tax Court cases involve amounts in dispute that are less than the cost of hiring counsel. And even where (as here) the amount at issue justifies hiring counsel, the prevailing petitioner typically obtains no recovery that might cover litigation costs, and the relevant fee-shifting statute, section 7430, is remarkably stingy. However, the cost of depositions--including the cost of paying counsel to prepare for them and to attend and conduct them, and the cost of paying a court reporter to attend and to provide transcripts--is

one of the major expenses of litigation, even for the non-deposing party who is merely defending against the other party's discovery. It is a cost so significant that it is sometimes virtually disabling and makes litigation impractical.

To avoid this dynamic, the Tax Court's rules do not treat depositions as routine. Rule 74(c)(1)(A), embodying the well-known, long-standing practice of the Tax Court, provides: "The taking of a deposition of a party, a nonparty witness, or an expert witness under this paragraph is an extraordinary method of discovery \* \* \*." (Emphasis added.) But the circumstances of this case, and the reasons respondent desires the deposition, appear to be entirely ordinary. If we allow a deposition for the reasons respondent argues here, it is unclear why we would not routinely allow depositions. It is therefore

ORDERED that respondent's motion to take petitioner's deposition is denied without prejudice. Respondent may renew the motion upon a showing of extraordinary circumstances. Or, if respondent makes documented attempts at discovery but at trial is surprised by petitioner's testimony, respondent may at that time move for appropriate relief, including negative inferences, the exclusion of evidence, or a continuance.

**(Signed) David Gustafson**  
**Judge**

Dated: Washington, D.C.  
December 2, 2013